



COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

West Central Regional Office
3019 Peters Creek Road, Roanoke, Virginia 24019
Telephone (540) 562-6700, Fax (540) 562-6725
www.deq.virginia.gov

David K. Paylor
Director

Steven A. Dietrich
Regional Director

COMMONWEALTH OF VIRGINIA WASTE MANAGEMENT BOARD CONSENT ORDER

ISSUED TO

Couvrette Building Systems
EPA ID VA0001018027

Section A: Purpose

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to Couvrette Building Systems to resolve certain alleged violations of environmental laws and/or regulations at the Couvrette Building Systems facility in Salem, Virginia.

Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Couvrette" means Couvrette Building Systems, the manufacturing division of E.F. Couvrette Company, Inc., a California corporation, licensed to do business in Virginia and assigned Federal Identification Number 95-3502841.

6. "Order" means this document, also known as a consent order.
7. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("HWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.
8. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*
9. "Regional Office" means the West Central Regional Office of the Virginia Department of Environmental Quality, which is located at 3019 Peters Creek Road, Roanoke, Virginia 24019.

Section C: Findings of Fact and Conclusions of Law

1. Couvrette is located at 565 Electric Road, Salem, Virginia. The facility manufactures ATM structures (aka kiosks) for the banking industry. Activities that occur at this location include structural building, priming, and painting. The company also owns its own truck fleet for shipping, and services the trucks in an on-site maintenance department. The facility is considered a Small Quantity Generator ("SQG") of hazardous waste and has been assigned EPA hazardous waste generator ID number VA0001018027.
2. Waste streams at the facility include waste paint, parts washer solvent, used oil, solvent contaminated rags, still bottoms from the distillation unit, waste paint in mixing cups, and paint booth filters. EPA waste codes for the above wastes include D001, D018, D039, D040, F003, and F005.
3. A Hazardous Waste (RCRA) Compliance Assistance Visit ("CAV") was conducted on August 27, 2003. As a follow-up to the visit, a letter and report were mailed to the facility on September 19, 2003. The report contained a summation of observations made during the visit and recommendations to help the facility avoid non-compliance with the Virginia Hazardous Waste Regulations ("VHWMR"). Some of the recommendations were as follows:
 - A hazardous waste determination for the paint booth filters should be completed by Couvrette.
 - Couvrette should keep containers holding hazardous waste closed.
 - Couvrette personnel must properly handle hazardous waste.

- Couvrette must properly label and date containers containing hazardous waste.
 - Couvrette should conduct weekly inspections of hazardous waste containers and document the inspections.
 - Couvrette should properly train personnel in the handling of hazardous waste.
 - Couvrette should institute proper emergency preparedness
 - Couvrette should properly use the manifest system.
4. On January 25, 2005, Regional Office staff was requested to respond to Couvrette to assist the Department of Emergency Management ("DEM") and Salem Fire Department ("SFD") with an oil/chemical spill. An anonymous call was received that oil was being discharged to a stormwater drain. A sprinkler line froze and burst in the used oil storage building. Once the line thawed and water began to flow into the building, the water floated several used oil containers that were not properly closed or were already leaking. The used oil containers spilled their contents resulting in a water/oil mixture discharging from the building. Facility personnel were attempting to control and contain the spill with small wet/dry shop vacuums when the Department, DEM, and SFD arrived on-site. Due to the inadequacy of the facility's response equipment and the recommendation of the DEM and SFD, the facility contracted with W.E.L., Inc. ("WEL") to manage the release and remove the water/oil mixture.
5. Once WEL had cleaned up the spill, SFD officials inspected the building. WEL did not vacuum twelve drums stored in the building containing unknowns. SFD officials evaluated the twelve drums and determined that three drums were empty, one drum was ruptured and leaking which WEL over packed, four drums were marked as containing acetone, and the remaining five drums were not labeled. Lieutenant Brian Thurman, SFD, took Volatile Organic Compound (VOC) and Lower Explosive Limit (LEL) readings with a portable Photo Ionization Detector (PID) of the nine drums. Lieutenant Thurman reported to DEQ staff that all nine drums had "hits" for VOCs with four having VOC concentrations greater than 100% of the LEL, indicating the drums may contain hazardous waste.
6. Because one of the nine drums ruptured and leaked its contents into the room, Department staff requested analytical results on the 1170 gallons of oily water that WEL had containerized at the site. Results were provided to DEQ on February 14, 2005. The results indicate that the oily water mixture also contains constituents consistent with a solvent or possibly old gasoline, either of which could be considered a hazardous waste at the point of generation for characteristic and/or listed hazardous waste codes under 40 CFR 262.11.
7. Department staff conducted a hazardous waste compliance evaluation inspection at Couvrette on January 27, 2005. In a Notice of Violation issued to Couvrette on February 22, 2005, the Department cited twenty-three alleged violations of the Regulations at Couvrette.

Consent Order

E.F. Couvrette Company, Inc.

Couvrette Building Systems

Page 4 of 12

8. Department staff spoke with Mr. Dean Fisher, General Manager of Couvrette, on February 14, 2005. During the conversation Mr. Fisher stated that he had been employed by Couvrette for one year prior to becoming Plant Manager and that he had served as Plant Manager for two years. Mr. Fisher stated that the nine drums of unknown material in the used oil storage building may have been there for as long as he has been employed by Couvrette.
9. Inspection results showed that in apparent violation of 40 CFR 262.11, Couvrette failed to make a proper waste determination of the following waste streams: paint booth filters, wipe down rags contaminated with lacquer thinner, distillation bottoms from the solvent recycling unit, waste paint in the mixing cups, the nine 55-gallon drums of unknown material in the used oil storage building. With the exception of the nine 55-gallon drums, Couvrette was disposing of the listed items as solid waste. This area of apparent non-compliance was cited in the August 27, 2003 CAV.
10. Inspection results showed that in apparent violation of 40 CFR 232.20 (a), Couvrette used a Bill of Lading instead of a Hazardous Waste Manifest for shipments of spent parts washer solvent dated 01/06/2004, 09/30/2003, 01/30/2003, 11/19/2001, 07/23/2001, and 04/09/2001. In addition, as cited in paragraph 9, Couvrette was disposing of other potential hazardous waste streams as solid waste.
11. Inspection results showed that in apparent violation of 40 CFR 262.34(a) (2), Couvrette failed to date two 55-gallon drums of waste paint related material in the flammable cabinet in the paint shop; nine 55-gallon drums of unknown waste material in the used oil storage building; two 5-gallon cans of spent lacquer thinner waiting to be recycled in the distillation unit. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
12. Inspection results showed that in apparent violation of 40 CFR 262.34 (a) (3), Couvrette failed to label or mark clearly with the words "Hazardous Waste" two 55-gallon drums of waste paint related material in the flammable cabinet in the paint shop; nine 55-gallon drums of unknown waste material in the used oil storage building; two 5-gallon cans of spent lacquer thinner waiting to be recycled in the distillation unit; one 55-gallon drum in the 180-day accumulation area dated 01/26/2005. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
13. Inspection results showed that in apparent violation of 40 CFR 262.34 (c) (1) (a) (ii), Couvrette failed to mark satellite containers at paint booths #2 and P-4 with either the words "Hazardous Waste" or with other words that identify the contents of the containers.
14. Inspection results showed that in apparent violation of 40 CFR 262.34 (d), Couvrette stored the 9 55-gallon drums in the used oil storage building for more than 180 days. From the PID

readings of the drums (paragraph 5) and the analytical testing from the spill cleanup residue (paragraph 6) the drums appear to contain hazardous waste. As cited in paragraph 8, the drums may have been stored for at least 3 years.

15. Inspection results showed that in apparent violation of 40 CFR 265.171 as referenced by 262.34 (d) (2), Couvrette failed to use a container in good condition to hold hazardous waste and transfer the hazardous waste to a container in good condition. One of the nine 55-gallon drums was ruptured (paragraph 5).
16. Inspection results showed that in apparent violation of 40 CFR 265.173 (a) as referenced by 262.34 (d) (2), Couvrette failed to keep one 5-gallon can of recyclable solvent near the recycling unit, two 55-gallon drums in the flammable cabinet, and one 55-gallon drum at paint booth P-4 closed during storage. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
17. Inspection results showed that in apparent violation of 40 CFR 265.173 (b) as referenced by 262.34 (d) (2), Couvrette failed to handle or store one drum in the used oil storage building that was ruptured, two drums in the used oil storage building that were bulging, and the aforementioned four open containers (paragraph 16) in a manner which prevents a rupture or leak of the container. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
18. Inspection results showed that in apparent violation of 40 CFR 265.174 as referenced by 262.34 (d) (2), Couvrette was not completing weekly inspections of the hazardous waste accumulation areas. The failure by Couvrette to take action to correct the ruptured and bulging drums supports the fact that the areas were not being inspected. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
19. On February 14, 2005, Mr. Fisher, Plant Manager, stated in a phone conversation that he was unaware of any type of agreements or arrangements between Couvrette and the police, fire departments, and emergency response teams to familiarize these organizations with the facility in the event of an emergency. This is an apparent violation of 40 CFR 265.37 (a) as referenced by 262.34 (d) (4) (a).
20. Inspection results showed that in apparent violation of 40 CFR 262.34 (d) (5) (ii), Couvrette failed to post next to the telephone the name and number of the Emergency Coordinator, the location of fire extinguishers and spill control material, alarm, and the telephone number of the fire department. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
21. Inspection results showed that in apparent violation of 40 CFR 262.34 (d) (5) (iii), Couvrette

failed to ensure that all employees are thoroughly familiar with the proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies. The numerous violations listed above demonstrate that Couvrette failed to train employees in the proper handling of hazardous waste. The actions of facility personnel during the January 25, 2005 spill also indicate that employees have not received the proper training. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.

22. On January 25, 2005, Couvrette experienced an oil/chemical spill which escaped the building, flowed into a stormwater drop inlet and discharged to surface water approximately one half mile away. On February 14, 2005, Mr. Fisher, Plant Manager, stated in a phone conversation that Couvrette did not notify the National Response Center ("NRC") or any local emergency response teams. This is an apparent violation of 40 CFR 265.37 (a) as referenced by 262.34 (d) (5) (iv)(c) which requires that in the event of a fire, explosion, or other release which could threaten human health outside the facility or when a generator has knowledge that a spill has reached surface water, the generator must immediately notify the NRC.
23. Inspection results showed that in apparent violation of 40 CFR 262.40 (c) as referenced by 262.44 (a), Couvrette failed to keep records of any test results, waste analyses, or other determinations made in accordance with §262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal. Couvrette personnel stated that a TCLP had been performed on the paint booth filters and Couvrette had made a determination that the filters were not hazardous waste. Couvrette was not able to provide the TCLP results to the Department.
24. Inspection results showed that in apparent violation of 40 CFR 262.42 (b) as referenced by 262.44 (b), Couvrette failed to submit exception reports to the EPA Regional Administrator for the region in which Couvrette is located. Couvrette did not have signed copies of manifests 17538 on 05/06/2004, 01121 on 01/30/2003, and 01133 on 05/16/2002. This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
25. Inspection results showed that in apparent violation of 40 CFR 268.7 (a), Couvrette failed to determine if generated hazardous waste, the hazardous waste streams that Couvrette disposed of as solid waste (paragraph 9), required treatment before being land disposed.
26. Inspection results showed that in apparent violation of 40 CFR 268.7 (a) (2), Couvrette failed to notify the treatment, storage or disposal facility receiving hazardous waste that the waste does not meet the applicable treatment standards and is restricted from land disposal. Couvrette disposed of waste paint related materials which may carry the waste codes D001,

F003, and F005 as solid waste. Had Couvrette made the determination referenced in paragraph 25 and the notification, the receiving facility (landfill) would not have accepted the waste.

27. Inspection results showed that in apparent violation of 40 CFR 268.40 Table of Treatment Standards for Hazardous Waste, Couvrette failed to meet the treatment standards for paint booth filters, solvent contaminated rags, distillation bottoms and waste paint that may carry the waste codes D001, F003, and F005.
28. Inspection results showed that in apparent violation of 40 CFR 268.50 (a) (1), Couvrette stored hazardous waste restricted from land disposal, nine 55-gallon drums of either waste paint related material and/or old gasoline, without the intent of recovery, treatment or disposal for at least three years (paragraph 8).
29. Inspection results showed that in apparent violation of 40 CFR Part 270 EPA Administered Programs: The Hazardous Waste Permit Program, Couvrette stored nine 55-gallon drums of hazardous waste longer than 180-days without receiving a permit from EPA or the Department.
30. Inspection results showed that in apparent violation of 40 CFR 279.22 (b), Couvrette stored used oil in containers and aboveground tanks that were not in good condition, i.e. no severe rusting, apparent defects or deterioration, or leaking (paragraphs 5 and 15). This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
31. Inspection results showed that in apparent violation of 40 CFR 279.22 (c), Couvrette failed to mark one 55-gallon drum containing used hydraulic oil and located in the fabrication shop and one 55-gallon drum containing waste oil and located in the truck maintenance shop with the words "Used Oil". This area of apparent non-compliance was also cited in the August 27, 2003 CAV.
32. Department enforcement and compliance staff met with representatives of Couvrette on March 23, 2005. At the time of the meeting, the representatives provided additional information and documentation to the Department. This information was reviewed by Department staff and it was determined that Couvrette has made an effort since the January 25, 2005 incident and the January 27, 2005 inspection to comply with the regulations and correct all compliance issues at the facility.
33. At the time of the 2005 release, WEL, was contracted to conduct a clean-up of the release. WEL conducted sampling during the course of the clean-up and the samples were submitted to the Department. The sampling was conducted on February 8, 2005. The samples were analyzed by REIC and the results indicated the existence of petroleum

products in the diesel, oil, and gasoline range. Volatile organic compounds were also present in the samples.

34. WEL was contracted by Couvrette to conduct a clean-up and sampling of the area formerly used to store hazardous waste, waste oil, and other chemicals. Couvrette intended to show that the clean-up had achieved a 'clean-closure' of the hazardous waste management unit by demonstrating that the concentrations of the hazardous constituents of concern are at levels that meet the acceptable risk-based performance standards. The risk-based performance standards used are both the Maximum Concentration Levels for drinking water and risk-based concentrations for soil and industrial sites.
35. WEL completed the clean-up of the unit and sampling was conducted on April 28, 2006 and May 1, 2006. REIC conducted the analysis and the analysis was based on the constituents found in the February 2005 samples. The results of sampling indicate that the constituents of concern are not present in the samples.
36. Based on the sampling and analysis submitted to the Department, the Department has determined that Couvrette has demonstrated a 'clean-closure' based on the fact that the concentrations of the hazardous constituents of concern are below the method detection limits of the analytical test methods for those constituents and therefore, the concentrations of the hazardous constituents of concern are at levels that meet the acceptable risk-based performance standards.
37. Department staff conducted a hazardous waste compliance evaluation inspection at Couvrette on August 29, 2006. Inspection results indicated that Couvrette had achieved compliance with twenty-two of the twenty-three alleged violations identified in the January 27, 2005 inspection.
38. The August 29, 2006 inspection indicated that in violation of 40 CFR 262.34(d)(5)(iii), Couvrette failed to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies. During the inspection, Couvrette did not provide documentation that all employees who are responsible for handling hazardous waste at the 180-day accumulation areas were trained in proper waste handling and emergency procedures.
39. On September 25, 2006, the Department issued a Notice of Violation to Couvrette for the alleged violation cited in Paragraph 38.
40. On October 12, 2006, Couvrette provided the Department documentation that indicated employees had been trained in proper waste handling and emergency procedures during

training classes conducted on September 29, 2006 and October 4, 2006. This submittal was sufficient to resolve this area of non-compliance.

Section D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it pursuant to Code § 10.1-1455, orders COUVRETTE, and COUVRETTE voluntarily agrees that:

Couvrette shall pay a civil charge of Thirty-Seven Thousand One Dollars (\$37,100) in settlement of the violations cited in this Order. The civil charge shall be paid in four-quarterly payments of Nine Thousand Five Hundred Forty-One Dollars (\$9,541). The first payment is due no later than 30 days after the effective date of the Order. The second payment is due no later than 120 days after the effective date of the Order. The third payment is due no later than 210 days after the effective date of the Order. The fourth payment is due no later than 300 days after the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

The payment shall include COUVRETTE's Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

Section E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of COUVRETTE, for good cause shown by COUVRETTE, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations pertaining to the facility specifically identified herein, including the violations specified in the Notice of Violation issued by the Department to COUVRETTE on February 22, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local

regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, COUVRETTE admits the jurisdictional allegations, but does not admit the factual findings, and conclusions of law contained herein.
4. COUVRETTE consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. COUVRETTE declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
6. Failure by COUVRETTE to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. COUVRETTE shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. COUVRETTE shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. COUVRETTE shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which the Town intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees, and

assigns, jointly and severally.

10. Any plans, reports, schedules or specifications attached hereto or submitted by COUVRETTE and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and COUVRETTE. Notwithstanding the foregoing, COUVRETTE agrees to be bound by any compliance date that precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to COUVRETTE. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve COUVRETTE from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By the signature of an authorized official below, COUVRETTE voluntarily agrees to the issuance of this Order.
14. The undersigned representative of COUVRETTE certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind COUVRETTE to this Order. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of COUVRETTE.

Consent Order
E.F. Couvrette Company, Inc.
Couvrette Building Systems
Page 12 of 12

And it is so ORDERED this day of 3-2, 2007.

Steven A. Dietrich
Steven A. Dietrich, Regional Director
West Central Regional Office
Department of Environmental Quality

E.F. Couvrette Company, Inc. voluntarily agrees to the issuance of this Consent Order:

Edward F. Couvrette

Edward F. Couvrette, President
E.F. Couvrette Company, Inc.

The foregoing instrument was acknowledged before me on 1-19-07

By Edward F. Couvrette, President, on behalf of E.F. Couvrette Company, Inc.

in the County/City of Dale, State of VA

Jalin D. Gump
Notary Public

My Commission expires:

My Commission Expires
Dec. 31, 2008